

REMARKS

First, the Applicant would like to thank Examiner Tran for extending the courtesy of an interview on February 21, 2003 to discuss this case.

As previously mentioned, this is responsive to an Office Action of November 14, 2002. After entry of this response, claims 12, 13 and 15-20 remain pending in the present application and new claims 21-26 are hereby added to the application.

The Examiner has rejected claims 12, 13 and 17-19 under 35 U.S.C. § 102(b) as being anticipated by de Bruijne et al. (U.S. Patent No. 5,194,273). Furthermore, the Examiner has rejected claims 14-16 and 20 under 35 U.S.C. § 103(a) as being unpatentable over de Bruijne et al.. In response, Applicant respectfully traverses the above-mentioned rejections and requests reconsideration by the Examiner in view of the previously submitted amendments and/or the following remarks.

As previously mentioned, the Examiner has rejected claims 12, 13 and 17-19 under 35 U.S.C. § 102(b). In general, the Examiner asserts that de Bruijne discloses a laminated dough comprising a plurality of margarine layers distributed between layers of a proofed dough product. The Examiner submits that since de Bruijne teaches these elements, claims 12, 13 and 17-19 are anticipated by this reference.

It is well established that to sustain a rejection under 35 U.S.C. § 102(b), a single prior art reference has to meet every limitation of the claimed invention. In re Paulson, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994); Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1 USPQ 2d 1241 (Fed. Cir. 1986); Hybertech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 USPQ 81 (Fed. Cir. 1986). If an independent claim is non-obvious and novel then any claim depending therefrom is non-obvious and novel because it contains all limitations of the independent claim plus a further limitation. Hartness International, Inc. v.

Simplimatic Engineering Co., 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987). Therefore, to sustain a rejection under 35 U.S.C. §102(b) in the present application of claims 12, 13 and 17-19, as well assert a rejection of new claims 21-26, a single reference would have to teach each of the limitations present in independent claims 12, 17 and 24. The previously cited reference (de Bruijne) does not satisfy this requirement.

The reference, deBruijne, fails to disclose or suggest a laminated crust dough or laminated crust that includes a plurality of proofed dough layers, a plurality of margarine layers distributed between and a plurality of puncture openings positioned on the laminated crust dough or laminated crust, as is claimed in amended independent claims 12, 17, and 24 of the present application. The laminated dough described in de Bruijne is intended to be utilized in puffed pastries, danishes and croissants and does not include a plurality of puncture openings from docking the laminated dough. The docking of the products disclosed or suggested in the de Bruijne reference would inhibit the lift in these products upon baking and thereby provide an undesirable final product.

In view of the previous paragraphs, the deBruijne reference does not disclose or suggest a laminated crust dough or laminated crust that includes a plurality of proofed dough layers, a plurality of margarine layers distributed between and a plurality of puncture openings positioned on the laminated crust dough or laminated crust. Therefore, all the limitations of the present claims are not disclosed or suggested in the de Bruijne reference and hence a rejection of claims 12, 13 and 17-19 is not substantiated pursuant to 35 U.S.C. §102(b).

In addition, as previously mentioned the Examiner has rejected claims 14-16 and 20 under 35 U.S.C. §103(a) as being unpatentable over de Bruijne (U.S. 5,194,273).

The Examiner bears the initial burden in establishing a prima facie case of obviousness when rejecting claims under 35 U.S.C. §103. In re Piasecki, 745 F.2d 1468, 223

USPQ 758 (Fed. Cir. 1985); In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). If the Examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of non-obviousness.

To properly establish a prima facie case of obviousness, MPEP § 706.02(j) identifies three basic criteria that must be met. First, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. Second, there must be some suggestion or motivation in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine reference teachings. Finally, there must be a reasonable expectation of success. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

A prima facie case of obviousness concerning the present application has not been established since the reference cited by the Examiner do not disclose all of the claim limitations in the present application. The de Bruijne reference does not disclose a laminated crust dough or laminated crust that includes a plurality of proofed dough layers, a plurality of margarine layers distributed between and a plurality of puncture openings positioned on the laminated crust dough or laminated crust (see discussion above pertaining to the §102(b) rejection).

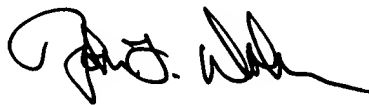
Moreover, the de Bruijne reference would appear to teach away from a laminated crust dough or laminated crust that includes a plurality of proofed dough layers, a plurality of margarine layers distributed between and a plurality of puncture openings positioned on the laminated crust dough or laminated crust. The puffed pastry, danish or croissant products disclosed or suggested in de Bruijne pursue optimization of the lift of the puffed pastry, danish or croissant during baking. The puffed pastry, danish or croissant products disclosed in de Bruijne require growth due to the formation of vapour bubbles formed during the baking operation. See de Bruijne at Col. 1, lines 64-68. Contrary to the teachings of de Bruijne the present application

teaches that the dough is docked or punctured to prevent the dough from expanding or ballooning in the oven. See Specification at page 9, lines 2-4. Therefore, a person of ordinary skill in the art would not contemplate the docking of the puffed pastry, danish or croissant products as disclosed in the de Bruijne reference. Hence, the claims of the present application would not meet the criteria necessary to establish obviousness pursuant to 35 U.S.C. §103(a).

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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